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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 VERIZON SELECT SERVICES, INC.;)
4 MCIMETRO ACCESS TRANSMISSION)
5 SERVICES, LLC; MCI COMMUNICATIONS)
6 SERVICES, INC.; TELECONNECT LONG)
7 DISTANCE SERVICES AND SYSTEMS CO.)
8 d/b/a TELECOM USA; AND TTI)
9 NATIONAL, INC.,)

10 Complainants,)

11 vs.) DOCKET NO. UT-081393

12) Volume IV

13 UNITED TELEPHONE COMPANY OF) Pages 95 - 145

14 THE NORTHWEST, d/b/a EMBARQ,)

15)

16)

17 Respondent.)

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20 A settlement conference in the above matter

21 was held on September 9, 2009, at 9:31 a.m., at 1300

22 South Evergreen Park Drive Southwest, Olympia,

23 Washington, before Administrative Law Judge ADAM E.

24 TOREM, Chairman JEFF GOLTZ, Commissioners PATRICK

25 OSHIE, and PHILIP JONES.

26

27 The parties were present as follows:

28 VERIZON SELECT SERVICES, INC., and all other
29 complainants, by CHRISTOPHER D. OATWAY, Assistant
30 General Counsel, 1320 North Courthouse Road, Ninth
31 Floor, Arlington, Virginia 22201; telephone, (703)
32 351-3037.

33 Kathryn T. Wilson, CCR

34 Court Reporter

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1 UNITED TELEPHONE COMPANY OF THE NORTHWEST, by
2 WILLIAM E. HENDRICKS, III, Attorney at Law, 902 Wasco
3 Street, Hood River, Oregon 97031; telephone, (541)
4 387-9439.

5 UNITED TELEPHONE COMPANY OF THE NORTHWEST, by
6 TORRY R. SOMERS, Senior Counsel, 330 South Valley View,
7 Las Vegas, Nevada 89107; telephone, (702) 244-8100.

8 AT&T SERVICES, INC., by CINDY MANHEIM,
9 General Attorney, 8645 154th Avenue Northeast, Redmond,
10 Washington 98052; PO Box 97061, 98073; telephone,
11 (425) 580-8112.

12 WASHINGTON UTILITIES AND TRANSPORTATION
13 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
14 General, 1400 South Evergreen Park Drive Southwest,
15 Post Office Box 40128, Olympia, Washington 98054;
16 telephone, (360) 664-1225.

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1 P R O C E E D I N G S

2 JUDGE TOREM: Good morning. My name is Adam
3 Torem. I'm an administrative law judge with the
4 Washington Utilities and Transportation Commission.
5 This is Docket UT-081393. It's the case of Verizon
6 Access versus United Telephone, or Embarq. Today's
7 date is Wednesday, September 9th, 2009, a little after
8 9:30 in the morning.

9 I have with me today the commissioners of the
10 Washington Utilities and Transportation Commission,
11 Chairman Goltz, Commissioner Oshie and Commissioner
12 Jones, and they will be presiding with me today on a
13 proposed settlement in this complaint.

14 As you all know, we had a hearing on the
15 merits of this complaint. That would have been held
16 August 5th, 6th and 7th, but on the eve of that
17 hearing, the complaining parties, Verizon Access,
18 versus Embarq, announced they had reached a settlement
19 in concept. They were able to get that settlement
20 filed on either the 12th or 13th. The narrative
21 supporting this settlement came in, I believe, Monday
22 the 24th of August, and both AT&T and Commission staff
23 and the other parties in this case filed their views in
24 writing a few days later.

25 Today, the commissioners having had a chance

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1 to review the testimony in the docket that's relevant
2 and all the supporting documents we are going to hear
3 your presentations on the multiparty settlement as well
4 from a panel of witnesses.

5 What I would like to do now is take
6 appearances and then swear in those participating panel
7 members, which I understand to be Mr. Vasington,
8 Mr. Felz, Mr. Roth, and Mr. Zawislak, and potentially
9 we have some other folks present as well, but I'll
10 swear those four in and then we will hear statements as
11 necessary from the attorneys and get into the
12 questioning or presentations for the witnesses.

13 At this time though let's take appearances
14 from the parties. Verizon Access?

15 MR. OATWAY: Good morning, Your Honor. Chris
16 Oatway with Verizon Access.

17 JUDGE TOREM: For Embarq?

18 MR. HENDRICKS: Tre Hendricks for Embarq.

19 MR. SOMERS: And Torry Somers for Embarq.

20 JUDGE TOREM: For AT&T?

21 MS. MANHEIM: Cindy Manheim for AT&T.

22 MR. THOMPSON: Jonathan Thompson for
23 Commission staff.

24 JUDGE TOREM: Mr. Oatway, you have
25 Mr. Vasington, and that's the only witness that Verizon

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1 Access is presenting today?

2 MR. OATWAY: That's correct.

3 JUDGE TOREM: Your witnesses are,
4 Mr. Hendricks?

5 MR. HENDRICKS: Mr. John Felz is appearing on
6 the stand today, and on the phone, we have Hank Roth,
7 and in the audience, we have John Jones.

8 JUDGE TOREM: I take it Mr. Felz is here to
9 my left?

10 MR. FELZ: Yes, John Felz on behalf of
11 Embarq.

12 JUDGE TOREM: Thank you. Mr. Roth, can you
13 hear us on the phone?

14 MR. ROTH: Yes, I can.

15 JUDGE TOREM: For Commission staff,
16 Mr. Thompson.

17 MR. THOMPSON: We have Tim Zawislak here, and
18 also in the audience we have Dr. Blackmon and staff
19 member Jing Liu and Rick Applegate.

20 JUDGE TOREM: If we need those witnesses in
21 the audience, we will bring you up. My anticipation is
22 those at the table are the ones that will receive
23 questions, if any, from the commissioners and myself.
24 If there are other witnesses that we don't swear in
25 immediately that the other attorneys present have some

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1 questions they would like to ask, please let me know
2 and remind me, please, that they haven't been sworn in
3 yet.

4 So I'm asking going to ask that the witnesses
5 that are at the table please stand and raise your right
6 hand.

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8 Whereupon,

9 THE PANEL,

10 having been first duly sworn, were called as witnesses
11 herein and examined and testified as follows:

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13 JUDGE TOREM: Mr. Roth, did you hear the
14 oath? I'm not sure if you could or not.

15 MR. ROTH: Yes, I did.

16 JUDGE TOREM: You affirm as well?

17 MR. ROTH: Yes, I do.

18 JUDGE TOREM: Mr. Oatway, Mr. Hendricks, I'm
19 going to let you explain what presentations you have
20 for the commissioners on the settlement documents
21 themselves, and then we can go forward with questions.

22 MR. HENDRICKS: For Embarq, I think our
23 narrative statement speaks to the nature of the
24 settlement and the reason why the Company believes that
25 it's in the public interest. We offer Mr. Felz as a

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1 witness, and I believe he has a brief opening statement
2 for the commissioners.

3 MR. OATWAY: Likewise with Verizon, we offer
4 Mr. Vasington as a witness in support of the proposed
5 settlement. If appropriate, I would like to take just
6 a few moments, Judge Torem, to sort of lay some
7 background and introduce Mr. Vasington and explain why
8 we brought the complaint and sort of how we got here,
9 if that's acceptable.

10 JUDGE TOREM: I think that would be fine.

11 MR. OATWAY: Again, I'm Chris Oatway. I
12 represent Verizon Access, the IXC and the CLEC entities
13 that brought the complaint against Embarq. The
14 background is that we brought the complaint about a
15 year ago alleging violations of two Washington
16 statutes, Revised Code of Washington Section 80.36.186,
17 and Revised Code of Washington Section 80.36.140.

18 The complaint that we filed before the
19 Commission was similar to a complaint that AT&T had
20 filed a few years earlier against Verizon Northwest,
21 and in particular, Verizon filed a complaint because it
22 felt that the level of Embarq's switched access rates
23 created a, quote, undue and unreasonable prejudiced and
24 competitive advantage for Embarq, vis-a-vis its
25 competitors in the long-distance market.

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1 So that's sort of the genesis. After the
2 benefit of a full factual record, and as Judge Torem
3 noted, on the eve of the hearing, the parties got
4 together, and, of course, the Administrative Procedures
5 Act encourages parties to seek to settle their
6 disputes, we managed to settle the dispute, and because
7 we think that the settlement is in the interest of both
8 parties and in the public interest. So I'll let
9 Mr. Vasington speak a little more as to the public
10 interest standard and why we think it meets that
11 standard, but essentially, I just wanted to sort of lay
12 that groundwork.

13 The bottom line is we think it meets the
14 standards because it reduces what we think we showed
15 was an undue competitive advantage that we think
16 violated Washington statutes.

17 JUDGE TOREM: Mr. Oatway, the standard you
18 are referring to is the one in our procedural rules and
19 the APA as applicable; is that correct?

20 MR. OATWAY: The standard that I was
21 referring to was -- in terms of the Administrative
22 Procedures Act, I was referring to, I think it's
23 Section 345060, which I think strongly encourages
24 parties, especially parties in complex proceedings, to
25 seek to settle their disputes.

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1 JUDGE TOREM: Mr. Vasington, you've been
2 sworn. I understand you are ready with an opening
3 statement.

4 MR. VASINGTON: Yes, thank you. Good
5 morning, Mr. Chairman, Commissioners, and Judge Torem.
6 Thank you for the opportunity to present Verizon's
7 views on why we think the settlement is in our interest
8 and also in the public interest.

9 My written testimony in this case was
10 primarily about the specific statutory violations that
11 Verizon alleges in its complaint about why Embarq's
12 rates violate the relevant standards under Washington
13 law. I did address some of the policy issues that
14 surround access charges and rate levels.

15 In terms of the specific reasons why the
16 rates, we believe, violated the standards under law, I
17 explained that Embarq's rates granted an unfair
18 competitive advantage to the Company, and that is a
19 violation. In doing so, I compared the rates, the
20 prices that Embarq offers its customers for long
21 distance calls to its intrastate switched access rates,
22 and that comparison showed that competitors literally
23 lose money every time they complete a call within
24 Embarq service territory. Now, this settlement
25 resolution will address that situation, and from

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1 Verizon's point of view is good policy because it
2 reduces Embarq's artificial competitive advantage.

3 But there are also important overall policy
4 reasons as to why this settlement is in the public
5 interest. It's well established that reducing
6 excessive switched access rates is good policy because
7 it increases economic efficiency. That's been
8 recognized for years by economists and regulators who
9 have been following access reform ever since the
10 divestiture of AT&T.

11 This point has also been recognized by this
12 commission. For example, in 1996 when the Commission
13 ordered substantial intrastate access reductions for
14 Qwest, the Commission found that the reduction in
15 access rates can be expected to have substantial
16 economic benefit for residential and business customers
17 of this state.

18 I discussed the benefits that come from
19 access rate reductions and lowering costs for
20 Washington customers who make calls within the state to
21 using long-distance providers who have to pay the
22 access rate. I would be happy to discuss it further if
23 you have any questions about that.

24 Importantly, there are no negative policy
25 results or implications coming from this settlement.

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1 There is a substantial evidentiary record showing that
2 Embarq did not demonstrate the need for any subsidy to
3 its local service. Based on the evidence I presented,
4 Embarq could actually undertake further reductions
5 without jeopardizing its ability to continue to offer
6 local service to its customers at current rates.

7 But also importantly, the settlement that we
8 had filed addresses only this complaint and does not
9 bind the Commission or the Staff, as they noted in
10 their comments, to any result in any future proceeding
11 or any other policy results in any other cases that may
12 come down the road. It does bind Verizon and Embarq in
13 certain respects but does not prevent the Staff or
14 Commission from reaching any results in any other case,
15 and I would be happy to answer any questions you have
16 at the appropriate time.

17 JUDGE TOREM: Mr. Hendricks, do you have
18 witnesses that want to make an opening statement as
19 well?

20 MR. HENDRICKS: Yes, Your Honor. Mr. Felz
21 has an opening statement.

22 JUDGE TOREM: Mr. Felz, why don't you go
23 ahead.

24 MR. FELZ: One quick question before I get
25 started. Would it be helpful for me to outline the

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1 terms of the settlement, or does everybody....

2 JUDGE TOREM: Why don't we do that briefly.

3 MR. FELZ: First, United will file a tariff
4 effective January 1st, 2010, to eliminate its
5 originating intrastate carrier common line charge.
6 Second, United will file a tariff effective January
7 1st, 2010, reducing its originating intrastate local
8 switching access charge 2.0158172, and the third rate
9 impacting aspect of the settlement is that we will
10 reduce our intra USM additive by a total of 50 percent
11 in two equal installments over two years; the first
12 reduction of 25 percent effective January 1st, 2011,
13 and the second 25 percent effective January 1st, 2012.

14 There are also some parameters in the
15 settlement with respect to future advocacy in other
16 proceedings, and there are three of those. First,
17 Verizon will not object to United seeking the ability
18 to request full recovery or any reductions to access
19 charges with offsetting increases to local rates in an
20 AFOR or other rate proceeding.

21 The second, both parties retain the right to
22 address the appropriateness of a Washington State USF
23 in any future proceeding, and third, Verizon will not
24 seek any other reduction in United's intrastate
25 switched access rates, including the USF additive,

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1 except in the context of a rule-making or general
2 proceeding where the parties can address the potential
3 establishment of a replacement stating USF mechanism
4 and other related matters such as whether establishment
5 of the state USF fund is appropriate policy in
6 Washington, including such issues as affordability of
7 rates, impact on competition, and investment policies.

8 Those are the major tenets of the settlement.

9 I don't want to repeat the points that are in our
10 narrative, so I'm going to get right to the point on
11 why United believes the settlement is in the public
12 interest. As you are aware from our testimony, United
13 does not relish the idea of reducing its access
14 revenues, particularly the interim USF additive,
15 without a simultaneous opportunity to determine an
16 appropriate replacement mechanism.

17 However, as a compromise, United entered into
18 the settlement because it permits us to retain 50
19 percent of the interim USF additive and phase the
20 reduction of the other 50 percent over an appropriate
21 time period. At the same time, this compromise leaves
22 open the opportunity for a comprehensive and fair
23 analysis and determination of a replacement mechanism
24 to take into consideration the effects of these
25 reductions before any further reductions are made, and

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1 the settlement allows for this to take place in the
2 proper forum and context, that being an AFOR and/or a
3 generic proceeding where there is an opportunity to
4 discuss the impacts on residential customers and United
5 in light of our obligations, growing competition, and
6 the effects of pricing changes on universal service.

7 A complaint proceeding involving a limited
8 set of parties within a limited customer class is not
9 the right context to review and make far-reaching
10 public policy determinations that include such complex
11 and interrelated issues. This agreement, therefore,
12 gives the Commission and the parties the flexibility to
13 continue these important discussions in a manner that
14 will allow for a much broader and holistic approach to
15 understanding the implications of these issues before
16 any further reduction in the interim USF additive takes
17 place.

18 United views this as a two-step process. We
19 hope at some point in the near future, the Commission
20 will address the need for long-term sustainable
21 mechanism to maintain universal service support in
22 Washington by opening a generic proceeding to review
23 the various interrelated issues associated with the
24 state USF.

25 This agreement also leaves open the

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1 possibility through an AFOR proceeding to have a full
2 review of revenue losses associated with the access
3 reduction that potentially impact United carrier's
4 last-resort obligations. The Company would do so
5 taking into consideration and without impacting the
6 conditions outlined in the Commission's recent order on
7 the Embarq and CenturyTel merger.

8 However, United strongly believes that the
9 compromise in the form of this settlement is a much
10 better solution for consumers in the state of
11 Washington than the proposals offered by other parties
12 in this case. Thank you.

13 JUDGE TOREM: Thank you, Mr. Felz.

14 MS. MANHEIM: Ms. Manheim, Mr. Thompson, do
15 you want to make comments at this time?

16 MR. THOMPSON: Mr. Zawislak would like to
17 make a brief initial statement, if you like.

18 JUDGE TOREM: Let me just inquire of Mr. Roth
19 and see if he had any opening statement, but I see
20 Mr. Hendricks shaking his head, but Mr. Roth, is there
21 anything else you wanted to add to what Mr. Felz said?

22 MR. ROTH: No.

23 JUDGE TOREM: So we will turn to you,
24 Mr. Zawislak.

25 MR. ZAWISLAK: My name is Tim Zawislak on

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1 behalf of the Commission staff here supporting the
2 settlement agreement between Embarq and Verizon.
3 Although Staff didn't sign onto the agreement, we do
4 support it, and we recommend the Commission accept it
5 and approve it. Unlike Verizon, we had more than one
6 witness. Myself included, we have four: Dr. Blackmon,
7 Ms. Liu, and Mr. Applegate as well, so we covered quite
8 a few of the issues throughout the proceeding, and we
9 feel that the settlement agreement matches up
10 relatively closely with Staff's recommendation and that
11 it's a positive outcome in this case.

12 We also note that consistent with the merger
13 proceeding between CenturyTel and Embarq, the
14 Settlement allows for Staff's ultimate recommendations
15 to come into fruition through an AFOR proceeding or a
16 general rate case that would be filed according to the
17 terms of a merger agreement. Also, I want to note that
18 Mr. Bill Wyman is also in the audience, and he had
19 testified on behalf of Staff with regard to the merger
20 agreement, and he is also available if there is
21 specific questions about that process.

22 JUDGE TOREM: Ms. Manheim?

23 MS. MANHEIM: We just have a very short
24 statement. AT&T did not sign on to the settlement
25 agreement. We believe that, as we stated throughout

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1 our testimony, that the interstate switched access
2 rates needed to be reduced more and done so more
3 quickly than what's provided in the settlement.

4 Nevertheless, we do believe the settlement is
5 a step in the right direction, and for that reason, we
6 do not oppose the settlement and believe it should go
7 forward, and Ms. Melon is here. She's one of our
8 witnesses, and she is also available to answer any
9 questions anyone would have.

10 JUDGE TOREM: Thank you. Commissioners, I
11 believe it's time for your questions as they might fall
12 here.

13 CHAIRMAN GOLTZ: I have a couple. First for
14 Mr. Vasington, and thank you for coming today, you
15 mentioned that you saw no negative policy results in
16 the settlement, and I can think of one potential one,
17 and that is in this settlement, you agreed to not
18 challenge access charges in a subsequent proceeding
19 except in some generic rule-making proceeding, and I
20 don't see a limitation on that. It's common in
21 proceeding like this to have a party agree to a
22 stay-out of a year or two or three, but I don't see a
23 termination date on this agreement to stay out, and so
24 looking ahead down the road five years, ten years,
25 whatever number of years, I find it a little bit

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1 troublesome that never would you consider making a
2 challenge to access charges, and given the way the
3 telecommunications industry seems to be going, who
4 knows what it's going to look like in five years or ten
5 years, what your companies are going to look like.
6 Service territories swap hands and there is mergers and
7 acquisitions, and I think it could get confusing down
8 the road. So is there an implicit limitation on that
9 stay-out?

10 MR. VASINGTON: I'll let counsel correct me
11 if I'm wrong.

12 MR. OATWAY: I would be happy to take that as
13 well. The answer is that I think that's right. There
14 is no sort of five-year limit or any limit on how long
15 Verizon has agreed not to challenge Embarq's intrastate
16 switched access rates, and the limitation is what we
17 are agreeing to do as a Company is Verizon won't bring
18 another complaint, essentially, against Embarq with
19 respect to Embarq's intrastate switched access rates,
20 and we didn't really see a need for a termination
21 period on that.

22 I would note that Staff is interested in the
23 good public policy reasons to insure that all carriers
24 are charging reasonable interest rates. There is other
25 sort of private attorneys, general, like Ms. Manheim,

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1 who are fully capable of, if they see a violation,
2 bringing a private complaint. We didn't think that as
3 a company it was a particularly strong risk.

4 Frankly, it didn't come up in the
5 negotiations. If I had it to do over, maybe I would
6 have sought such a limitation, but we didn't think it
7 was a substantial problem.

8 CHAIRMAN GOLTZ: My concern, and I'll ask the
9 other counsel also, the way the proceedings come before
10 the Commission, there is some times we have the office
11 of Public Counsel that brings an action. Sometimes the
12 Commission enters a motion through Staff and files a
13 complaint, but there are a number of cases where we
14 have private complaint actions, and our statute, just
15 like our APA encourages settlement of these cases, our
16 statutes contemplate that there be these complaint
17 proceedings, and that's one way good public policy can
18 be effected in the state in the utilities area, and it
19 gives me some pause to have this sort of one player, a
20 major player, kind of say, well, we are out of this
21 game against this other company and this subject
22 forever, and Mr. Hendricks, did you have a response on
23 that? How big of a deal was this in your negotiations?

24 MR. HENDRICKS: It was certainly an important
25 term in the settlement agreement with the company for

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1 Embarq, and there are other avenues the Commission has
2 to address these important policy issues, and I think
3 the settlement agreement reflects the Company belief
4 that the appropriate avenue is to address these types
5 of policy considerations are ones in which all the
6 players and all the parties in the industry are
7 involved and where the Commission can look at these
8 issues holistically and have an opportunity to see the
9 impact on not just one company and one set of customers
10 but all customers in the state, and that's the kind of
11 issue that's raised in this complaint, and that's why
12 we've settled this case and hopefully given the
13 Commission an opportunity to take that route.

14 CHAIRMAN GOLTZ: I'm not disagreeing with the
15 holistic approach, and if you look at the public
16 interest statement filed by Mr. Thompson that outlines
17 some of the history of that and the efforts the
18 Commission has made in the past and the necessity in
19 some context to get some legislative approval, but I
20 just don't want to put all the eggs in one basket here.

21 I would understand if there is a limitation
22 for the life of the rate changes up into 2012, but I
23 found it odd that you would go beyond 2012.

24 MR. VASINGTON: If I could just address this,
25 this is all a fair point, and while I do believe that

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1 Verizon witnesses and counsel do it better than anybody
2 else in having that opportunity is a good thing, if you
3 look around the country at access charge cases and
4 complaints, they are brought by a variety of people.
5 Often times they are brought by Commission staff or
6 consumer advocates. Many times Commissions on their
7 own motion open these cases. AT&T often times brings
8 complaint cases, and Verizon is a big participant. We
9 are a big long-distance company, and access charges are
10 important to us, but there are many, many companies
11 that pay access charges, and I think the risk that our
12 absence will mean that there is an emptiness in this
13 field I think is a very small one, and I think you can
14 be assured that these issues will continue to be
15 addressed and as appropriate brought to your attention
16 by some of the many people who are also interested
17 participants in the industry.

18 COMMISSIONER OSHIE: I think I understand
19 this, but I'll ask the question and you can be clear.
20 There are no retail rates that are proposed to be
21 changed by the terms of this settlement.

22 MR. VASINGTON: That's correct.

23 MR. FELZ: That's correct.

24 COMMISSIONER OSHIE: Is there a relationship
25 between access charges and the retail rates that will

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1 be paid by customers in Washington, or is this really
2 just kind of a hypothetical benefit to the customers
3 whereas it's a generous benefit to Verizon's bottom
4 line, at least a long-distance company?

5 MR. VASINGTON: Long distance is a very
6 competitive business, and access rates across the
7 country have come down considerably since the time of
8 divestiture when they were set very high, and long
9 distance retail rates have come down considerably.
10 This is an input cost to a service that provided to
11 Washington customers for calls that are made within the
12 state.

13 So we do believe there will be direct
14 benefits to Washington consumers from this. It's not
15 just from Verizon, but there is no direct link in this
16 settlement to any other rates that are charged by
17 either company. This settlement itself only implicates
18 the intrastate switched access rates of Embarq.

19 COMMISSIONER OSHIE: So there is no
20 expectation then that the customers of Verizon or
21 Embarq or any other company will directly benefit from
22 this settlement. It's whatever the market will
23 generate as far as competition, and of course, aren't
24 the rates set on a national level, Mr. Vasington, long
25 distance rates?

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1 MR. VASINGTON: The terms of the settlement
2 itself don't directly change any other rates, but the
3 rates that long distance customers pay are in large
4 part a function of the costs of the companies that
5 incur those costs, and that's a basic feature of a
6 competitive market model.

7 The rates that Verizon charges for
8 long-distance service are we have a lot of different
9 rate plans, so different customers will pay different
10 rates. Some are based on a national model. Some are
11 based on intrastate versus interstate. These
12 particular costs, the intrastate access costs, only
13 effect the intrastate long distance rates that Verizon
14 offers to Washington consumers.

15 COMMISSIONER OSHIE: So then perhaps I can
16 infer from your testimony that your rates will go down
17 to your customers as a result of this settlement?

18 MR. VASINGTON: No. What happens in this
19 market is that the cost will go down, and under the
20 competitive market model, the rates that we charge for
21 long distance may go down. They may increase less than
22 they otherwise would if the costs were higher, or they
23 may stay the same even if the costs go higher. So I
24 don't exactly how they will be flowed through in a
25 dynamic market with a lot of moving pieces, but we do

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1 believe these cost savings will benefit customers one
2 way or the other.

3 COMMISSIONER OSHIE: Thank you. Does Staff
4 have an opinion on this question? In other words, I
5 know Staff supports it in general, but does Staff
6 believe that retail rates to Washington customers and
7 the companies involved here will go up or down as a
8 result no matter what the services is affected? There
9 is some prospect in here that, as an example of having
10 a long rambling question, Mr. Zawislak. That's always
11 a danger when you've got the microphone, but there is
12 some prospect in here that Embargo could come back in.
13 They wanted to leave that option open to come back and
14 ask their retail customers to cover the cost of the
15 loss of the access charge revenue.

16 What's the real benefit here to Washington
17 ratepayers? I see it really, at least in the
18 short-term and perhaps in the undetermined future, that
19 really the company that benefits from this is Verizon
20 because their bottom line is going to be improved by
21 the settlement, and I guess we have expectations that
22 that might be the extent of it.

23 MR. ZAWISLAK: I would like to make two main
24 points. I think from Staff's public interest statement
25 Mr. Thompson had put together, we basically note that

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1 the company hasn't been in for a rate case, Embarq has
2 not been in for a rate case in at least 20 years, so we
3 don't believe that the settlement agreement will
4 directly affect that one way or the other.

5 Then with regard to the second point, the
6 question was will the customers benefit, and I think
7 it's the main point of this whole proceeding is that
8 the switched access rates were alleged to be illegal
9 similar to the Verizon access rates that were alleged
10 to be illegal back in 2002, so the customers actually
11 have a detriment when there are illegal rates being
12 charged, so to arrive at a more legally enforceable
13 rate is a good thing for consumers and the market in
14 Washington.

15 MR. FELZ: Commissioner Oshie, if I could?

16 COMMISSIONER OSHIE: Yes.

17 MR. FELZ: Just briefly address this point.
18 I agree with everything that's been said in terms of
19 the impact that the settlement has on customer retail
20 rates, Embarq's local customer retail rates. There is
21 no direct tie between this settlement and rates.

22 As you have indicated, we will be evaluating
23 and have a desire if we can demonstrate that there is a
24 need, that we would like an ability to recover those
25 revenue reductions through some form, either a

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1 permanent state universal service fund or potentially
2 increases to local service rates, and that position,
3 actually Staff's testimony indicates that they believe
4 our local rates need to be looked at in today's
5 environment.

6 So the way we've looked at the settlement is
7 that we believe that the settlement mitigates the
8 impact of those potential future local rate increases.
9 We understand there is no guarantees here, but to the
10 extent that any of the other proposals that were put
11 forth in this proceeding were adopted, the local rates,
12 potential local rate increase for us to recover those
13 revenue losses would have been higher than what the
14 settlement reflects.

15 COMMISSIONER OSHIE: Thank you, Mr. Felz. I
16 guess it seems, and I take through your testimony or at
17 least your explanation this morning that Embarq may
18 look at the retail rates, which is of course if they
19 were to increase it have a direct effect on customers
20 that you serve, and if we were to approve this
21 settlement, I guess it's possible that long distance
22 rates charged, retail rates to customers may go down as
23 a result.

24 Is there any of the witnesses here believe
25 that if that were to happen that it would be a

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1 reciprocal relationship in the sense that retail rates
2 will go up to the extent that their long distance rates
3 will go down? Mr. Felz, would you like to say
4 something?

5 MR. FELZ: I don't know if I would have an
6 answer to that question. I think impacts on individual
7 customers, you obviously would not see a one-for-one
8 match between increases and long-distance fee
9 decreases. It depends upon the customer usage patterns
10 and whether or not they use a lot of long distance or
11 virtually none.

12 COMMISSIONER OSHIE: That would be my
13 expectation as well, Mr. Felz, but I don't see that it
14 being reciprocal or one-for-one as well.
15 Mr. Vasington?

16 MR. VASINGTON: Certainly, this settlement
17 has a direct effect on the access rates. It lowers
18 them, and history has shown that lower access rates
19 result in lower retail rates for customers. The
20 question of the other side, what happens to local rates
21 in the future, is not implicated by this settlement, is
22 not directly affected by this settlement. That would
23 be a function of future cases that are not bound by the
24 terms of this settlement in terms of what Staff say,
25 what the Commission decides, and it will be based on

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1 the evidence in those cases.

2 So you have one certain result from this
3 case, lower access rates, and I believe lower long
4 distance rates and benefits to customers. Everything
5 else is speculative and as a result of whatever this
6 commission decides to do without being restricted by
7 what happens here today.

8 COMMISSIONER OSHIE: Thank you,
9 Mr. Vasington. Mr. Zawislak?

10 MR. ZAWISLAK: I think a couple of points.
11 The Staff relies on the Commission's rules, especially
12 WAC 480-120-540, determining the access rule when
13 looking at access charges, and also the Staff -- I just
14 lost my train of thought; I'm sorry. With regard to
15 access charges...

16 COMMISSIONER OSHIE: I will assume,
17 Mr. Zawislak, that one of the reasons it supports this
18 settlement is because it does bring the ITAC into what
19 Staff believes to be compliance with the original
20 intent of the rule that was established by this
21 commission by order back in 1998, I believe, and so
22 there has been a long period in which the interim,
23 perhaps the ITAC as an interim access charge has become
24 more permanent than Staff would like.

25 MR. ZAWISLAK: The point that just alluded me

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1 and came back to me, beyond the rule itself for legal
2 precedent, Staff also looked to the ruling in Docket
3 UT-020406 as a precedent, really related directly to
4 the issues that we are dealing with in this case, so we
5 tried to apply that precedent.

6 COMMISSIONER OSHIE: That's the Verizon AT&T
7 case?

8 MR. ZAWISLAK: Yes.

9 COMMISSIONER OSHIE: If I remember correctly,
10 Mr. Zawislak, I think we reduced, and I'm going to
11 fudge the numbers here, but as a result of our order,
12 access charges that were charged by Verizon were
13 reduced approximately 30 million dollars, and that was
14 followed by a rate case that was filed by Verizon which
15 was coincidentally settled for approximately the same
16 amount of money, about 30 million dollars, but as a
17 result, retail rates for customers went up. I don't
18 recall the exact numbers, but it could have been almost
19 two dollars a customer for their residential rates to
20 customers.

21 MR. ZAWISLAK: I think that would be an
22 indirect relationship that we acknowledge that as well.

23 COMMISSIONER OSHIE: Thank you, Mr. Zawislak.
24 I just have one other question, I believe. It may be
25 followed up by others, but the originating local

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1 switching intrastate rate that will go down as a result
2 of this settlement, is the number that was agreed on,
3 does that bear any relationship to cost?

4 MR. ZAWISLAK: The local switching rate?

5 COMMISSIONER OSHIE: Yes.

6 MR. ZAWISLAK: Dr. Blackmon addressed that in
7 his testimony, but essentially, the rate would exceed
8 incremental cost. The current rate has a much higher
9 markup, so it's a more reasonable markup, but it is
10 above cost.

11 COMMISSIONER OSHIE: Thank you, Mr. Zawislak.
12 I don't have any other questions, Your Honor.

13 JUDGE TOREM: Were there any other responses
14 to that question from the Company as far as their view
15 on that rate?

16 MR. FELZ: I will just point out that it's
17 the equivalent rate to Verizon, the ILEC's rate, and I
18 believe Qwest at one time mirrored that rate. I think
19 their rate may be a little below that now.

20 JUDGE TOREM: Commissioner Jones?

21 COMMISSIONER JONES: Good morning. I have a
22 few questions. The first one is to Verizon Access and
23 AT&T. First of all, for Verizon, this is not a
24 settlement -- the signing party is not Verizon
25 Northwest. It's Verizon Access. It's essentially the

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1 former MCI; is that correct?

2 MR. OATWAY: That's correct.

3 COMMISSIONER JONES: So none of these
4 obligations apply to Verizon Northwest.

5 MR. OATWAY: That's correct.

6 COMMISSIONER JONES: The first question
7 follows on Commissioner Oshie. Mr. Vasington, you said
8 the long distance market is competitive. History has
9 shown that rates tend to go down when switched access
10 charges are reduced. How is the Commission supposed to
11 judge that? Commissioner Oshie indicated it may go
12 elsewhere, either to the income statement on the bottom
13 line or to a cap ex infrastructure.

14 How are we to judge where these reduced
15 switched access charges go? Maybe I'll start with
16 Ms. Manheim for AT&T.

17 MS. MANHEIM: So long distance rates,
18 intrastate long distance rates are set in the state one
19 rate for the entire state by an LD company, so the fact
20 that Embarq's rates are going down will be looked at in
21 our evaluation. I believe Mr. Vasington talked about
22 cost inputs versus price, but again, Embarq is one
23 player in kind of a large pool in Washington that AT&T
24 believes all access rates need to be looked at for all
25 carriers.

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1 MR. VASINGTON: I would counsel you to look
2 at experience, what has happened over time as access
3 rates have gone down, what has happened to long
4 distance rates and how competitive has the market been.
5 I'm sure your staff look at the abundance of data that
6 there is out there about the long distance industry; in
7 particular, the data that's put together by the FCC and
8 some of the joint boards of state regulators and
9 federal regulators, and they monitor the industry on a
10 regular basis, and what has been shown, and economists
11 have done empirical analyses to confirm this, is that
12 as the input cost goes down, the retail rate goes down.
13 They essentially confirm the model of the market, which
14 is as costs go down, rates go down, and I think you can
15 take a lot of comfort in that experience, any
16 expectation that that will continue as the market,
17 which is already very competitive, continues to be more
18 competitive in the future.

19 COMMISSIONER JONES: So basically,
20 Mr. Vasington, you are asking us to trust the market
21 and the competitive nature of the market, and I don't
22 mean to get into an argument here, and I understand the
23 long distance market as a whole has become much more
24 competitive as opposed to the terminating access
25 monopoly that the local exchange areas, especially in

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1 high-cost areas, have.

2 I'm not disputing that. We are dealing with
3 a term probably a market that has become more
4 competitive, but the issue before the Commission now is
5 a certain amount of access charge reductions, and we
6 are being asked to say that this is in the public
7 interest.

8 One of the elements of determining whether or
9 not it's in the public interest is what happens to this
10 money, and this has been a problem, as you know, and I
11 see others in the audience who know this, and with the
12 Missoula plan and other plans before the FCC is there
13 has always been this conundrum of determining where the
14 money flows with access charge reductions.

15 So I think Commissioner Oshie's points were
16 well taken. Does it go to consumers? Does it go to
17 broadband in the state? Does it go to infrastructure
18 in the state, or is it just pooled into this large
19 amount of revenue requirement or an amount of funds
20 that gets deployed by a consolidated company like yours
21 that has long distance and local exchange? Who knows
22 where it goes?

23 MR. VASINGTON: I think we are at a point in
24 time where it's not just a question of saying it's
25 faith-based regulation. I think you had a former

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1 chairman who used to use that term. The theory has
2 been confirmed empirically by decades of evidence now
3 that we are not just asking you to take it on faith.
4 We are asking you to take it on the basis of science
5 and the science of observation of what has happened.

6 This has been an issue for many years, so it
7 been studied extensively, and we could kill a lot of
8 trees with all the paper that's been written about this
9 issue. But it's more than just on faith. We are
10 actually asking you to accept the observed evidence of
11 what has happened to retail rate levels as access rates
12 have gone down.

13 MR. OATWAY: Commissioner Jones, could I add
14 one more sort of empirical comment on your question?
15 Of course Mr. Vasington is right that we can't predict
16 market conditions and what will happen in the future,
17 but of course there is substantial empirical evidence
18 which the Commission has cited in the past in approving
19 and requiring access reductions. The AT&T v. Verizon
20 Northwest case makes that very clear.

21 I would note if you want an empirical data
22 point, there was no specific representation in AT&T v.
23 Verizon Northwest as to what IXC's would do
24 subsequently, but the reality is that MCI
25 Communications did reduce its intrastate connectivity

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1 fee in the wake of its switched access reductions.
2 Given the market conditions that prevailed at the time,
3 one of the things that affected that analysis was the
4 fact that switched access rates were reduced, and
5 consumers directly benefited by a reduction in MCI's
6 instate connectivity.

7 I also might note in terms of both
8 Commissioner Oshie's comments and your comments on the
9 public interest element of this, as I mentioned in my
10 opening comments, the complaint is grounded in specific
11 allegations of statutory violations relating to undue
12 preferential advantage that we believe we showed Embarq
13 has based on its status as both a competitor to Verizon
14 and as an access charge provider, and from Verizon's
15 point of view as a ratepayer of that rate, we think we
16 are being placed at an unfair competitive disadvantage,
17 which violates statutes, and we think that this reduces
18 that unfair competitive disadvantage.

19 I appreciate that we need to think broadly
20 about the public interest, and there is a lot of
21 evidence that suggests that the public interest is
22 generally advanced by switched access reductions, but
23 specifically what's in front of the Commission is a
24 resolution of a complaint that Verizon brought which
25 ties to two specific statutory violations.

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1 COMMISSIONER JONES: My next question is for
2 Embarq. What are your views on the cost recovery issue
3 and your favored approach at this time? It seems to me
4 there are two ways to see cost recovery. One would be
5 a Commission proceeding, Mr. Hendricks, as you just
6 said. This could either be outside of the AFOR or in
7 the AFOR, and the other could be a state universal
8 service fund or some sort of recovery mechanism like
9 the USF fund that has failed in the past, as you know.

10 So what's your favorite approach at this time
11 about recovering these costs if you intend to do so?

12 MR. FELZ: Well, Commissioner Jones, I
13 believe that realistically we believe that it's
14 probably a combination of both of those avenues. We do
15 firmly believe that we have a universal service support
16 need. We serve high cost areas. Our density per
17 square mile is nine access lines per square mile
18 compared to Verizon at 40 and I believe Qwest at over
19 100, so we serve a lot of rural areas in the state, and
20 I think in this commission's comments to the FCC on
21 intercarrier compensation, they recognize that both
22 United and CenturyTel serve a large geographic area.
23 They have high costs to provide telecommunications
24 service, so we officially believe that universal service
25 has got to be an element of that, and we would like to

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1 see the Commission pursue that in a generic proceeding.

2 We also understand that we have a commitment
3 in our merger settlement to file an AFOR within five
4 years, and we understand that there have been
5 criticisms of our local rate structure, and some
6 believe that our local rates may have some room to
7 increase to be competitive or to be consistent across
8 the state, and so we believe that is an avenue that we
9 obviously are committed to do and we will pursue, so I
10 believe that's it's a combination of those two, and
11 neither one can do it alone.

12 COMMISSIONER JONES: In the interim until you
13 pursue that approach, what is the plan for capital
14 investments in the state of Washington? Are they going
15 to be affected by the settlement of the case and the
16 reduced revenue requirements?

17 MR. FELZ: I don't know of any immediate
18 plans to change capital investment as a result of this
19 settlement. As we said before, while we don't relish
20 giving up revenues, we believe the mitigation that's
21 provided by this settlement and the fact that we
22 preserve the ability to continue to recover 50 percent
23 of the universal service fund rate element coupled with
24 the fact that this is transitioned over a few year
25 period mitigates and certainly lessens the risk that we

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1 will have significant reductions in capital
2 expenditures, specifically as a result of this
3 settlement.

4 COMMISSIONER JONES: My next question is for
5 all parties. I think I will start with Ms. Manheim of
6 AT&T. In your letter where you say you don't support
7 or oppose the settlement, you say, quote, "AT&T
8 strongly urges that Washington pursue comprehensive
9 reform of intrastate access charges." So this tees up
10 the issue that we have been talking about how to get at
11 this issue. Do you have any specifics on how we should
12 do this, because I know you are active before the FCC
13 as well. There is a national issue and a state issue.
14 Do you have any specifics on how the Commission or
15 state should proceed here?

16 MS. MANHEIM: As I think Commissioner Oshie
17 noted earlier, there was an effort to have a universal
18 service fund put into place about ten years ago or so,
19 and the Commission did look at that proceeding to look
20 at how to set that up.

21 We actually believe at this time a
22 combination approach probably needs to be evaluated
23 between the Commission and the legislature, because we
24 recommend that in order to set up a state universal
25 service fund, you are going to need -- from the

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1 legislature.

2 So we believe there should be comprehensive
3 reform that looks at all the carriers in the state and
4 the access charges for all carriers and looks at a
5 combination of a state universal service fund and also
6 adjustments to retail rates.

7 COMMISSIONER JONES: For staff?

8 MR. ZAWISLAK: To the extent I understand the
9 question or remember the question, I will try to
10 address it. Let me know if I'm off point.

11 COMMISSIONER JONES: The specifics, Tim, are
12 how should we proceed if there is to be a comprehensive
13 look at intrastate access? Should it be a Staff
14 investigation? Should the Commission initiate
15 something? Should we wait for another party to file a
16 private complaint? Does Staff have an opinion on this?

17 MR. ZAWISLAK: Although I'm not a lawyer, my
18 understanding of the law as the way it exists is that
19 the process of a complaint is possibly one of two ways
20 to change access charges. The other being a rate
21 proceeding, a general rate case as such, or I suppose a
22 third would be, which is consistent with a general rate
23 case, is the company's voluntary filing. Rate
24 increases would probably be adjudicated, but rate
25 decreases likely often go through or could possibly go

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1 through like a normal 30-day process, so kind of a
2 streamlined process.

3 One thing with regard to some of the comments
4 that were made earlier, I think the notion of a revenue
5 reduction being equal to a cost recovery issue, I think
6 Staff believes that that's not always directly the
7 case, especially if a company hasn't been looked at in
8 over 20 years, which many of the smaller companies,
9 including Embarq, have not been in for a general rate
10 case. We probably need to have a better understanding
11 of their current costs as well.

12 With regard to universal service, I think
13 they addressed that with speaking about the current
14 state of the law. I don't think that that's
15 necessarily possible with the current state of the law.
16 Thank you.

17 COMMISSIONER JONES: I'm going to follow-up
18 just a bit with you, because even your initial
19 testimony advocated for complete elimination of the
20 ITAC in three years.

21 MR. ZAWISLAK: That was Staff's overall, and
22 Dr. Blackmon did testify specifically to that, and it
23 wasn't that Staff's position is zero is the right rate
24 necessarily but that it would provide an incentive
25 along with the merger conditions for the company to

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1 come in and file a general rate case file synergy
2 savings and have staff take a look at the up-to-date
3 costs, that that would be able to then be reflected
4 through the rate structure of the company.

5 It's pretty much a company-by-company
6 specific basis at this point because there is no
7 universal service program.

8 COMMISSIONER JONES: But would you agree that
9 the word "interim" on the ITAC is probably a misnomer?

10 MR. ZAWISLAK: It has proved to be.

11 COMMISSIONER JONES: Verizon, do you have any
12 comments on the structure of a state Commission
13 proceeding?

14 MR. VASINGTON: We actually believe that this
15 complaint process is an efficient way to address the
16 biggest distortion in that you can evaluate the ITAC on
17 the basis of company-specific evidence. Through this
18 process, we do understand that if there is to be a more
19 comprehensive proceeding -- first there is nothing in
20 this settlement that would prevent or preclude or
21 prejudge an outcome to that type of proceeding, but
22 that it must be done in concert with the legislative
23 requirements for a mandate. That would be a
24 significant proceeding that would involve a lot of
25 evidence and a lot of evaluation necessary to go

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1 through that.

2 I don't have a particular recommendation on
3 what the best process is given your rules but do
4 recognize that when it's been tackled in the past by
5 the Commission, it does require a significant amount of
6 effort and coordination with the legislature.

7 COMMISSIONER JONES: My understanding of
8 Verizon's strategy nationwide is to pursue
9 comprehensive reform of the FCC while at the same time
10 initiate private complaints in various states. So how
11 many states have you initiated complaints in over the
12 last year or two and what have the results been to
13 date, briefly? Is it ten states or twenty states?

14 MR. VASINGTON: Probably closer to ten.
15 Maybe counsel would know better than I do.

16 MR. OATWAY: I think offhand there is a
17 combination of efforts. We do participate in
18 comprehensive reform efforts, but we also have found
19 through experience that it's often more efficient to
20 bring access charge complaints against particularly
21 large chargers of access charges. What we find is
22 often times in the context of a comprehensive
23 proceeding that the issues that relate to the
24 mom-and-pop telephone companies, which are somewhat
25 distinct, we think, from the midsize telephone

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1 companies, gets deflated, and it becomes difficult to
2 achieve reform that gets at the biggest distortions.

3 COMMISSIONER JONES: Embarq, Mr. Felz or
4 Mr. Hendricks, do you have an opinion?

5 MR. FELZ: Consistent with what we said
6 earlier, we believe that this access charge reform has
7 to be done on a holistic basis and that to the extent
8 that major policy determinations are going to be made,
9 need for universal service support, appropriate
10 benchmarks for local rates, that that needs to be done
11 in a comprehensive manner, and I guess we would be in
12 sync with what AT&T said in term of a proceeding that
13 would involve all carriers.

14 COMMISSIONER JONES: So the entity Century
15 Link would not oppose participating in a state or
16 Commission proceeding that might financially not be
17 beneficial to your particular company, but you would
18 participate in this?

19 MR. FELZ: We would participate. I guess
20 left to determine whether it would be financially
21 advantageous to us or not.

22 COMMISSIONER JONES: I think those are my
23 questions.

24 JUDGE TOREM: Mr. Felz, I wanted to
25 follow-up, and maybe Mr. Hendricks is best to question

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1 about this. The Chairman's question about the time
2 limitation on Verizon access staying out, if in our
3 discussions we find it's not in the public interest for
4 Verizon Access as a significant CLEC to stay out
5 forever, would imposing a condition on our acceptance
6 of the settlement, if that's what the Commission
7 chooses to do, with a time limit, would that force
8 Embarq's hand out of the settlement?

9 MR. HENDRICKS: That is a very important term
10 of the agreement for Embarq. I don't think that I
11 could represent on behalf of my client today as to
12 whether that would force the company out, and it would
13 probably require some discussion, but it is a very
14 important term, and I think it would force a serious
15 look at whether or not the company would remain a party
16 to the settlement.

17 JUDGE TOREM: You acknowledge though, I
18 think, that Staff's public interest statement and
19 review is correct that no other party is so limited, so
20 Staff could come back right away and file a complaint.
21 AT&T could file a complaint, so it's only Verizon
22 that's being taken out for a period of time.

23 MR. HENDRICKS: Your Honor, that's correct.

24 JUDGE TOREM: The Commission will take that
25 under advisement and will see what conditions, if any,

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1 are imposed if the settlement is accepted.

2 CHAIRMAN GOLTZ: The agreement doesn't have
3 what you see in some agreements, that I recall, saying
4 this is binding and all successors sign, etcetera, so
5 is the stay-out provision, if Verizon Select Services
6 morphs into some other company in five years, you
7 aren't saying that this now binds that subsequent
8 company to stay out, but some larger company.

9 MR. HENDRICKS: I think it would bind that
10 entity, assuming it remained a subsidiary to the new
11 company. There is any number of circumstances that
12 might occur, but it may in some circumstances bind --

13 CHAIRMAN GOLTZ: Say that some of their
14 service territory is sold to AT&T. Is AT&T now bound
15 by this?

16 MR. HENDRICKS: Probably not.

17 JUDGE TOREM: Mr. Oatway, I wanted to turn
18 back to your complaint. I think it's Paragraph 9
19 actually summarizes what the statutory violations that
20 were alleged, and under 80.36.140 and 80.36.186, and as
21 Mr. Zawislak put it, essentially that the rates were
22 illegal.

23 In looking at the record before us, we are
24 going to apparently find after a hearing based on the
25 settlement that the rates were unlawful or illegal, and

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1 as you alleged, created an unduly preferential
2 situation for Embarq. If we find that this particular
3 statute, 80.36.140, requires the Commission to
4 determine just and reasonable rates that will
5 thereafter be in effect, so I wanted your company's
6 opinion as to whether the Commission's endorsement of
7 the rates and the access rate reductions that are
8 embodied in the settlement are therefore going to be
9 just and reasonable as the statute said we have to
10 determine.

11 MR. OATWAY: In a sense, this gets to sort of
12 the core of the Commission and the Administrative
13 Procedure Acts requirement or encouragement the parties
14 settlement complex proceedings. Yes, what we alleged
15 in our complaint is that current rates are illegal
16 under Washington law and that the standard that should
17 be applied to determine what's a reasonable rate for
18 Embarq should be either the switched access rates of
19 Verizon Northwest or the switched access rates of
20 Qwest, and the reason for those proposed benchmark is
21 that we know that Verizon Northwest is the company
22 that's received the most scrutiny of its switched
23 access rates.

24 So what we alleged in our complaint is that
25 to cure what we believe is a violation of Washington

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1 law, the Commission should require Embarq to mirror
2 Verizon Northwest's switched access rates. So I
3 understand your question is if they are not going that
4 far, if they are leaving in place a substantial ITAC,
5 which we argued should be fully eliminated, does it now
6 comply with Washington law, and I guess my answer to
7 you is that as a company, we think that it has
8 sufficiently reduced our competitive disadvantage in
9 the Washington market such that it's an acceptable
10 settlement, and we think that it's appropriate for the
11 Commission to approve that settlement, and under the
12 settlement agreement, we don't take a position on
13 whether the Commission should go farther.

14 JUDGE TOREM: I think, Mr. Felz, your own
15 testimony mentioned before any further reduction takes
16 place, so there seems to be an assumption from Embarq
17 that this is a start, that there will be a further
18 proceeding of some sort, and perhaps these intrastate
19 access rates, as Verizon and AT&T and even Commission
20 staff argued for originally, will come down further,
21 but this is an interim step.

22 MR. FELZ: We understand that the position of
23 the other parties in this proceeding has been that
24 further reductions are needed. This settlement I think
25 satisfies the parties in terms of where we are now, and

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1 we view the settlement as an opportunity for us to
2 transition both our local rates and hopefully achieve
3 some more permanent universal service fund support that
4 would allow the interim USF to be reduced or eliminated
5 and be replaced by some form of permanent universal
6 service support.

7 JUDGE TOREM: So given that this is not a
8 fully litigated rate case and the record the
9 commissioners are judging for the purposes of the
10 settlement agreement, do you acknowledge that any
11 Commission determination that the new intrastate access
12 rates are just and reasonable is a snapshot of where
13 essentially the litigation left us today?

14 MR. FELZ: Yes, I would agree with that.

15 JUDGE TOREM: We were just wrestling with
16 that in our discussions yesterday, just what the
17 required determination might be taken by the parties,
18 and I think this discussion has given the adequate
19 indications of where the record reflects and where we
20 want to go with this. Commissioners, did that raise
21 further questions? Mr. Zawislak?

22 MR. ZAWISLAK: Yes. I would like to weigh in
23 on this issue. With regard to the law and my
24 understanding is in order of priority, it's first the
25 law, then rule, and then the precedent, and what we

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1 tried to do was comply with all three, but in this
2 case, the rule in WAC 480-125-40, subsection 2, it
3 states that where the Commission authorizes a company
4 to recover an ITAC, I believe it implies that it's just
5 and reasonable. It would be my interpretation.

6 JUDGE TOREM: Further comments on this train
7 of thought? Counsel, any closing comments?

8 MR. HENDRICKS: I just have one brief
9 comment. Mr. Oatway concluded his prior statement with
10 the statement that Verizon didn't take any position on
11 whether the Commission should go further. I don't
12 think any of the parties have taken a position about --
13 the settlement does speak for itself, but the parties
14 believe the settlement is in the public interest. No
15 party to this proceeding, at least to my knowledge,
16 takes the position on whether the Commission should go
17 further; for that matter, whether the Commission should
18 not go as far as we have suggested.

19 The settlement speaks for itself, and we
20 believe that at this point in time, it's consistent
21 with the public interest.

22 JUDGE TOREM: Thank you, Mr. Hendricks.

23 MR. OATWAY: I don't think I have anything
24 more, Your Honor. Thank you.

25 MS. MANHEIM: I do not have anything, Your

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1 Honor.

2 JUDGE TOREM: Mr. Thompson?

3 MR. THOMPSON: Nothing from Staff either.

4 JUDGE TOREM: I do want to talk with the
5 parties afterwards to confirm as far as the documents
6 that they wanted to make part of the record. My
7 understanding was that the prefiled testimony would
8 come in. The cross-exam exhibits had not been offered
9 and would not, so we will have a chance to discuss
10 exactly what the parties intended the record to be
11 before the Commission supporting the other documents
12 that were filed jointly and the comments, and we will
13 take that up off the record.

14 I think this is going to close, unless,
15 Mr. Hendricks, you have something.

16 MR. HENDRICKS: I have one brief comment with
17 respect to the testimony that will be admitted into the
18 record, and it really is just a concern. Obviously,
19 the Commission would likely cite to some of that
20 testimony. However, to the extent that testimony isn't
21 cited, the Company would prefer that that testimony
22 which is left in the record and not subject to
23 cross-examination not be available for use in future
24 proceedings as precedential or otherwise valid.

25 JUDGE TOREM: I'm not sure how it would

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1 become that without our endorsement directly of it, so

2 I don't think you need to worry too much about that.

3 Anything else?

4 (Settlement conference adjourned at 10:50 a.m.)

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